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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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*Ex parte* SCOTT R. PAINTIN, RIELEY K. SCOTT,  
MICHAEL J. HAFFER, and PAUL JOST

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Appeal 2015-007293<sup>1</sup>  
Application 11/535,353<sup>2</sup>  
Technology Center 3600

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Before: HUBERT C. LORIN, BRUCE T. WIEDER, and  
MATTHEW S. MEYERS, *Administrative Patent Judges*.

MEYERS, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the Examiner's Final rejection of claims 1–15, 17, 18, and 21–25. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

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<sup>1</sup> Our decision references Appellants' Appeal Brief ("Appeal Br.," filed November 25, 2014) and Reply Brief ("Reply Br.," filed July 27, 2015), the Examiner's Answer ("Ans.," mailed May 26, 2015), and Final Office Action ("Final Act.," mailed June 25, 2014).

<sup>2</sup> Appellants identify Western Union Company of Englewood, Colorado as the real party in interest (Appeal Br. 2).

## CLAIMED INVENTION

Appellants' claims relate "generally relates to marketing systems and methods" (Spec. ¶ 2).

Claims 1, 9, 14, and 17 are the independent claims on appeal. Claims 1 and 14, reproduced below, with added bracketed notations and paragraphing, are illustrative of the subject matter on appeal:

1. A method for providing a coupon code to a recipient via a network, comprising:

[a] storing a coupon code on a tangible storage medium of a host computer;

[b] receiving, at the host computer, a request for the coupon code from the recipient;

[c] in response to the request for the coupon code, sending a first text message to the recipient, wherein the first text message includes a terms and conditions agreement associated with the coupon code;

[d] prompting the recipient to accept or reject the terms and conditions agreement by sending to the host computer a response text message indicating acceptance or rejection of the terms and conditions agreement; and

[e] in response to receiving the response text message indicating acceptance of the terms and conditions agreement, sending a second text message from the host computer to the recipient, wherein the second text message includes the coupon code.

14. A system for providing a discount on a money transfer fee, comprising:

[a] a request device that receives a request to perform a money transfer from a recipient;

[b] a fee device that calculates a money transfer fee for the money transfer;

[c] a host computer system in communication with the request device and the fee device, the host computer system configured to, in response to the request for the money transfer, send a first text message to the recipient, wherein the first text

message includes a terms and conditions agreement associated with a coupon code and a prompt the recipient to accept or reject the terms and conditions agreement by sending to the host computer a response text message indicating acceptance or rejection of the terms and conditions agreement, and in response to receiving the response text message indicating acceptance of the terms and conditions agreement, sending a second text message to the recipient, wherein the second text message includes the coupon code; and

[d] a discount device in communication with the host computer, the discount device configured to discount the money transfer fee based on the coupon code, wherein the coupon code corresponds to a discount based on an identifier associated with the recipient's request, the identifier comprising a member selected from the group consisting of a name, an address, an Automatic Number Identification (ANI), a loyalty code or number, a registration number, and a personal identification number (PIN).

#### REJECTIONS

Claims 1–15, 17, 18, and 21–25 are rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter (*see* Ans. 4).

Claims 1, 2, 4–9, 12, 13, 24, and 25 are rejected under 35 U.S.C. § 103(a) as unpatentable over Brown (US 2004/0249712 A1, pub. Dec. 9, 2004), Pappas (US 7,313,539 B1, iss. Dec. 25, 2007), and Moore (US 2006/0004641 A1, pub. Jan. 5, 2006) (*see* Final Act. 2).

Claims 14 and 15 are rejected under 35 U.S.C. § 103(a) as unpatentable over Hafer (US 2004/0205023 A1, pub. Oct. 14, 2004), Pappas, and Brown (*see id.* at 18).

Claims 17 and 23 are rejected under 35 U.S.C. § 103(a) as unpatentable over Hafer and Moore (*see id.* at 25).

Claims 3, 10, and 11 are rejected under 35 U.S.C. § 103(a) as unpatentable over Brown, Pappas, Moore, and Hafer (*see id.* at 32).

Claim 18 is rejected under 35 U.S.C. § 103(a) as unpatentable over Hafer, Moore, and Brown (*see id.* at 35).

Claim 21 is rejected under 35 U.S.C. § 103(a) as unpatentable over Brown, Pappas, Moore, and Hanna (US 2007/0075129, pub. Apr. 5, 2007) (*see id.* at 36).

Claim 22 is rejected under 35 U.S.C. § 103(a) as unpatentable over Hafer, Moore, and Hanna (*see id.* at 37).

## ANALYSIS

### *Non-statutory subject matter*

Appellants argue claims 1–15, 17, 18, and 21–25 as a group (*see* Reply Br. 2–4). We select claim 1 as representative. The remaining claims stand or fall with claim 1. *See* 37 C.F.R. § 41.37(c)(1)(iv).

Under 35 U.S.C. § 101, an invention is patent-eligible if it claims a “new and useful process, machine, manufacture, or composition of matter.” 35 U.S.C. § 101. The Supreme Court, however, has long interpreted § 101 to include an implicit exception: “[l]aws of nature, natural phenomena, and abstract ideas are not patentable.” *See, e.g., Alice Corp. Pty Ltd. v. CLS Bank Int’l*, 134 S.Ct. 2347, 2354 (2014).

The Supreme Court, in *Alice*, reiterated the two-step framework previously set forth in *Mayo Collaborative Services v. Prometheus Labs., Inc.*, 566 U.S. 66, 82 (2012), “for distinguishing patents that claim laws of nature, natural phenomena, and abstract ideas from those that claim patent-eligible applications of these concepts.” *Alice Corp.*, 134 S.Ct. at 2355. The

first step in that analysis is to “determine whether the claims at issue are directed to one of those patent-ineligible concepts,” (*id.*, (e.g., to an abstract idea)). If the claims are not directed to a patent-ineligible concept, the inquiry ends. Otherwise, the inquiry proceeds to the second step where the elements of the claims are considered “individually and ‘as an ordered combination’” to determine whether there are additional elements that “‘transform the nature of the claim’ into a patent-eligible application.” *Alice Corp.*, 134 S.Ct. at 2355 (quoting *Mayo*, 566 U.S. at 78).

The Court acknowledged in *Mayo*, that “all inventions at some level embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Mayo*, 566 U.S. at 70. We, therefore, look to whether the claims focus on a specific means or method that improves the relevant technology or are instead directed to a result or effect that itself is the abstract idea and merely invoke generic processes and machinery. *See Enfish, LLC v. Microsoft Corp.*, 822 F.3d 1327, 1336 (Fed. Cir. 2016).

Here, in rejecting the claims under 35 U.S.C. § 101, the Examiner concludes that the claims, considered as a whole, are

directed to sending a terms and conditions agreement to a recipient who has already sent a request for a coupon code or discount, and providing the recipient with the coupon code or discount after the recipient agrees to the terms and conditions, which is a fundamental business method and thus an abstract idea.

(Ans. 4). The Examiner finds

[t]he claims do not include additional elements that are sufficient to amount to significantly more than the judicial exception because the use of text messages communicating with a host computer to send out coupon codes to customers/members is simply a business plan carried out by a common computer

communications system that add nothing new to the coupon marketing plan.

(*Id.* at 5). And, when “[v]iewed as a whole, these additional claim element(s) do not provide meaningful limitation(s) to transform the abstract idea into a patent eligible application of the abstract idea such that the claim(s) amounts to significantly more than the abstract idea itself” (*id.* (citing *Alice Corp.*, 134 S.Ct. at 2347)).

Appellants first argue that the Examiner “does not identify what exactly the allegedly abstract idea in the claims is, or (1.b) provide citation for its contention that for whatever the alleged abstract idea is, it is a fundamental economic practice, method of organizing human activity, idea itself, or a mathematical relationship/formula” (Reply Br. 2, 3). However, the Examiner determined the claims are

directed to sending a terms and conditions agreement to a recipient who has already sent a request for a coupon code or discount, and providing the recipient with the coupon code or discount after the recipient agrees to the terms and conditions, which is a fundamental business method and thus an abstract idea.

(Ans. 4), and as such, we find the Examiner has adequately articulated that the claims are directed to an abstract idea and fundamental economic practice. And, to the extent Appellants argue that the Examiner erred in adequately supporting this determination by providing citation, we find this argument unpersuasive.

In this regard, there is no requirement that examiners must provide evidentiary support in every case before a conclusion can be made that a claim is directed to an abstract idea. *See, e.g.*, para. IV “July 2015 Update: Subject Matter Eligibility” to 2014 Interim Guidance on Subject Matter

Eligibility (2014 IEG), 79 Fed. Reg. 74618 (Dec. 16, 2014) (“The courts consider the determination of whether a claim is eligible (which involves identifying whether an exception such as an abstract idea is being claimed) to be *a question of law*. Accordingly, courts do not rely on evidence that a claimed concept is a judicial exception, and in most cases resolve the ultimate legal conclusion on eligibility without making any factual findings.”) (emphasis added). Evidence may be helpful in certain situations where, for instance, facts are in dispute. But it is not always necessary. It is not necessary in this case. Instead, we need only look to other decisions where similar concepts were previously found abstract by the courts. *See Amdocs (Israel) Limited v. Openet Telecom, Inc.*, 841 F.3d 1288, 1294 (Fed. Cir. 2016) (“Instead of a definition [for what an ‘abstract idea’ encompasses], then, the decisional mechanism courts now apply is to examine earlier cases in which a similar or parallel descriptive nature can be seen—what prior cases were about, and which way they were decided.”)

According to the Specification, “[c]oupon codes are effective marketing tools, and many consumers are attracted by the savings and other opportunities made possible with these codes” (Spec. ¶ 4). The Specification observes that “some current coupon codes are limited in their ability to generate useful marketing information for coupon issuers and others who may find value in such data” (*id.*), and as such, “there remains a need for better approaches for delivering coupon codes to recipients in a convenient manner that can generate useful marketing data” (*id.*). And, taking independent claim 1 as representative, the claimed subject matter is generally directed to “proving a coupon to a recipient” including steps for “storing a coupon code,” “receiving . . . a request for the coupon code,” “in



response to the request for the coupon code, sending a . . . message to the recipient . . . includ[ing] a terms and conditions agreement associated with the coupon code,” “prompting the recipient to accept or reject the terms and conditions agreement by sending . . . [a] message indicating acceptance or rejection of the terms and conditions agreement,” and “in response to receiving the response . . . message . . . sending a second . . . message includ[ing] the coupon code.”

In this regard, sending a coupon code to a recipient based on the recipient’s assent to terms and conditions is a method of organizing human activity and/or fundamental economic practice, and as such, an abstract idea. *See Morsa v. Facebook, Inc.*, 77 F.Supp.3d 1007, 1014 (C.D. Cal. 2014), *aff’d*, 622 F. App’x 915 (Fed. Cir. 2015) (claims directed to “targeting advertisements to certain consumers, and using a bidding system to determine when and how advertisements will be displayed” held to be directed to an abstract idea). As noted by the court in *Morsa*, matching consumers with a given product or service “has been practiced as long as markets have been in operation.” *Morsa*, 77 F. Supp.3d at 1014 (quoting *Tuxis Technologies, LLC v. Amazon.com, Inc.*, No. CV 13–1771–RGA, 2014 WL 4382446, at \*5 (D.Del. Sept. 3, 2014)); *see also OpenTV, Inc. v. Netflix Inc.*, 76 F.Supp.3d 886, 893, No. 14–CV–01525–RS, at 10, 2014 WL 7185921 (N.D.Cal. December 16, 2014) (“The concept of gathering information about one’s intended market and attempting to customize the information then provided is as old as the saying, ‘know your audience.’”); *see also Affinity Labs of Texas, LLC v. Amazon.com Inc.*, 838 F.3d 1266, 1270 (Fed. Cir. 2016) (delivering media content to a wireless device is an abstract idea).

Appellants further argue that even if the claims are directed to an abstract idea, the claims “do not risk tying up the use of an abstract idea [and, thus,] do not pose a risk of preempting others from exploiting these ‘building blocks’ of human ingenuity” (Reply Br. 3). Appellants’ argument is not persuasive.

Although the Supreme Court has described “the concern that drives this exclusionary principle [i.e., the exclusion of abstract ideas from patent eligible subject matter] as one of pre-emption,” *Alice*, 134 S.Ct. at 2354, characterizing pre-emption as a driving concern for patent eligibility is not the same as characterizing pre-emption as the sole test for patent eligibility. “The Supreme Court has made clear that the principle of preemption is the basis for the judicial exceptions to patentability” and “[f]or this reason, questions on preemption are inherent in and resolved by the § 101 analysis.” *Ariosa Diagnostics, Inc. v. Sequenom, Inc.*, 788 F.3d 1371, 1379 (Fed. Cir.2015) (citing *Alice*, 134 S.Ct. at 2354). Yet although “preemption may signal patent ineligible subject matter, the absence of complete preemption does not demonstrate patent eligibility.” *Id.*

Appellants also argue that the Examiner fails to satisfy the second step of the *Alice* analysis because the Examiner merely “states in a conclusory manner that the claims don’t add anything more to the abstract idea itself (of which the Office Action has failed to identify)” (Reply Br. 4). However, the only claim elements beyond the abstract idea are directed to the system (including generic computing devices, processors, and memories) on which the method of proving a coupon to a recipient is performed. Considered as an ordered combination, these computer components add nothing that is not already present when the steps of the method are considered separately. The

claims do not, for example, purport to improve the functioning of the computer itself. Nor do they effect an improvement in any other technology or technical field. Instead, the claims amount to nothing significantly more than an instruction to apply the abstract idea of sending a coupon code to a recipient based on the recipient's assent to terms and conditions, i.e., "providing a coupon code to a recipient," which is not enough to transform an abstract idea into a patent-eligible invention. *See Alice Corp.*, 134 S.Ct. at 2360.

In view of the foregoing, we sustain the Examiner's rejection under 35 U.S.C. § 101 of independent claim 1, and claims 2–15, 17, 18, and 21–25, which fall with independent claim 1.

#### *Obviousness*

##### *Independent claim 1 and dependent claims 2–8, 24, and 25*

We are persuaded by Appellants' argument that the Examiner erred in rejecting independent claim 1 under 35 U.S.C. § 103(a) because Pappas, on which the Examiner relies, fails to disclose or suggest "prompting the recipient to accept or reject the terms and conditions agreement by sending to the host computer a response text message indicating acceptance or rejection of the terms and conditions agreement," as recited by limitation [d] of independent claim 1 (*see* Appeal Br. 4–7).

The Examiner maintains that the rejection is proper, and cites column 2, lines 31–36; column 5, lines 21–32; column 6, lines 48–57; column 9, lines 30–36; and Figures 2 and 3, of Pappas as disclosing the argued limitation (*see* Final Act. 5–6, 39–40; *see also* Ans. 5–6). However, we

agree with Appellants that there is nothing in the cited portions that discloses or suggests the argued limitation.

In making this determination, we note that Pappas is directed to a system for “providing electronic options for goods or services via a computer network such as the Internet or an intranet” (Pappas, col. 1, ll. 8–10). Pappas observes that its “method should make it easy and convenient for a purchaser to buy an option on goods or services to reserve a right to purchase desired goods or services with option terms set by a supplier of the goods or services” (*id.* at col. 2, ll. 33–37). Pappas discloses

[w]hen an electronic option is purchased, a purchaser is sent periodic reminders about the electronic options until the electronic option expires at the desired future time. The periodic reminders can be sent electronically, such as with electronic mail, (“e-mail”) or sent in other electronic or non-electronic formats (e.g., a post card in regular mail).

(*Id.* at col. 5, ll. 21–26; *see also id.* at col. 11, ll. 45–52). Pappas further discloses

[i]n another embodiment of the present invention, the electronic option is a “personalized electronic coupon” dynamically created by a server network device and sent to a client network device based on current or previous input from a user. In such an embodiment, a purchaser of the option may also input one or more desired options terms to create his/her own personalized electronic coupon. The personalized electronic coupon is governed by the electronic options terms determined by a desired supplier and/or by the purchaser.

(*Id.* at col. 6, ll. 48–57). Pappas discloses that “the electronic option terms established by the desired supplier for the desired good or service received on the client network device include a request for a user to enter personal information (e.g., name, address, phone number, e-mail address, etc.) that is used to associate a user with a desired electronic option” (*id.* at col. 9, ll. 30–

36). Pappas discloses that when “the electronic option terms **60** for the DVD player are accepted on the client network device **16** . . . . the electronic option terms are accepted by selecting the ‘ACCEPT’ button **58** (FIG. 4B)” (*id.* at col. 10, ll. 13–16).

We have reviewed the cited portions of Pappas and agree with Appellants that none of the cited portions of Pappas discloses or suggests the argued limitation. Instead, as Appellants point out, “Pappas specifically recites that ‘the electronic option terms are accepted by selecting the ‘ACCEPT’ button 58 (FIG. 4B)’” (Appeal Br. 5 (citing Pappas, col. 10, ll. 15–16)), and as such, “the user must actually click an accept button in order to accept the option terms” (*id.*). Thus, we fail to see, and the Examiner does not adequately explain how, Pappas’s disclosure regarding “‘emailing reminders about electronic options’ considered by the Examiner to be ‘sending terms and conditions’ of the current invention[], and []‘purchaser directly purchasing or deferring a purchase on an electronic option’ considered by the Examiner to be ‘accepting or declining the terms and conditions’ of the current invention[]” (Ans. 5–6 (bracketing omitted)) discloses or suggests the argued limitation. The Examiner does not rely on Brown or Moore to cure this deficiency (*see* Ans. 5–8).

In view of the foregoing, we do not sustain the Examiner’s rejection of independent claim 1 under 35 U.S.C. § 103(a) as unpatentable over Brown, Pappas, and Moore. For the same reasons, we also do not sustain the Examiner’s rejections of dependent claims 2–8, 24, and 25 which depend from independent claim 1.

*Independent claim 9 and dependent claims 10–13 and 21*

We are persuaded by Appellants' argument that the Examiner erred in rejecting independent claim 9 under 35 U.S.C. § 103(a) because Pappas, on which the Examiner relies, fails to disclose or suggest "the [interactive voice recognition (IVR)] system prompts the recipient to accept or reject the terms and conditions agreement," as recited by limitation [d] of independent claim 1 (*see* Appeal Br. 4–7).

The Examiner maintains that the rejection is proper, and cites column 2, lines 31–36; column 3, ll. 29–35; column 5, lines 21–32; column 9, lines 30–36; and Figures 2 and 3, of Pappas as disclosing the argued limitation (*see* Final Act. 9–10, 39–40; *see also* Ans. 6). More particularly, the Examiner finds that "Pappas teaches in col. 3, lines 29–35 and figure 1 an electronic option system that includes client network devices, including wireless telephones [] 'wireless telephones' considered by the Examiner to be 'interactive voice or IVR systems' of the current invention[]" (Ans. 6).

However, we agree with Appellants that there is nothing in the cited portions that discloses or suggests the argued limitation. In this regard, we note that the "client network devices **12, 14, 16**, i.e.," (*see* Pappas, col. 3, ll. 31) "wireless telephones," referred to by the Examiner (*see* Ans. 6), are only used to communicate with "server network devices **20, 22, 24**" (*see* Pappas, col. 3, ll. 45–46). Therefore, whether or not the "wireless telephones" of Pappas constitute an "IVR system" as required by independent claim 9, is irrelevant because it is not the wireless telephone that "prompts the recipient to accept or reject the terms and conditions agreement," as required by limitation [d], but rather the "server network devices **20, 22, 24**" (*id.*) of Pappas that would "prompt the recipient." The Examiner does not rely on Brown or Moore to cure this deficiency (*see* Ans. 5–8).

In view of the foregoing, we do not sustain the Examiner's rejection of independent claim 9 under 35 U.S.C. § 103(a) as unpatentable over Brown, Pappas, and Moore. For the same reasons, we also do not sustain the Examiner's rejections of dependent claims 10–13 and 21 which depend from independent claim 9.

*Independent claim 14 and dependent claim 15*

We are persuaded by Appellants' argument that the Examiner erred in rejecting independent claim 14 under 35 U.S.C. § 103(a) because “[w]hile Hafer discloses money transfer convenience cards, Hafer nonetheless, fails to teach or suggest presenting a fee discount coupon in response to acceptance of terms and conditions associated with the coupon, as in claim 14,” as recited by limitation [c] of independent claim 14 (*see* Appeal Br. 7, 8).

The Examiner maintains that the rejection is proper, and cites column 6, lines 48–57 of Pappas as disclosing the argued feature (*see* Ans. 8; *see also* Final Act. 19–20 (citing Hafer ¶ 50, Fig. 1A; Pappas, col. 5, ll. 23–32, col. 10, ll. 8–23, Figs. 2, 3, 4A, and 4B)). More particularly, the Examiner finds

[i]n the Final Office Action mailed June 25, 2014, claim 14 was prosecuted over Hafer in view of Pappas. As such, any deficiencies in Hafer can be covered by Pappas. In this instance, Pappas teaches in col. 6, lines 48–57 a “personalized electronic coupon” dynamically created by a server network and sent to a client network device based on current or previous input from a user. A purchaser of an option may input one or more desired options terms to create his/her own personalized electronic coupon [“purchaser inputting options terms in order to create his/her own personalized electronic coupon” considered by the

Examiner to be “acceptance of terms and conditions associated with the coupon” of the current invention] and [“coupon” inherently considered by the Examiner to be a “discount” of the current invention].

(Ans. 8).

We have reviewed the cited portions of Pappas and Hafer, and agree with Appellants that none of the cited portions of Pappas or Hafer discloses or suggests the argued features. Here, we note that limitation [c] of independent claim 14 recites

a host computer system in communication with the request device and the fee device, the host computer system configured to, in response to the request for the money transfer, send a first text message to the recipient . . . prompt[ing] the recipient to accept or reject the terms and conditions agreement by sending to the host computer a response text message indicating acceptance or rejection of the terms and conditions agreement.

Independent claim 14, thus, requires “prompt[ing] the recipient to accept or reject the terms and conditions agreement by sending to the host computer a response text message indicating acceptance or rejection of the terms and conditions agreement.” However, as discussed above with respect to independent claim 1, we agree with Appellants that “Pappas specifically recites that ‘the electronic option terms are accepted by selecting the ‘ACCEPT’ button 58 (FIG. 4B)’” (Appeal Br. 5 (citing Pappas, col. 10, ll. 15–16)), and as such, Pappas does not disclose or suggest that the recipient “accept[s] or reject[s] the terms and conditions agreement by sending to the host computer a response text message.” Thus, we fail to see, and the Examiner does not adequately explain how, Pappas discloses or suggests the argued feature. The Examiner does not rely on Hafer or Brown to cure this deficiency (*see* Ans. 8).



In view of the foregoing, we do not sustain the Examiner's rejection of independent claim 14 under 35 U.S.C. § 103(a) as unpatentable over Hafer, Pappas, and Brown. For the same reasons, we also do not sustain the Examiner's rejection of dependent claim 15 which depends from independent claim 14.

*Independent claim 17 and dependent claims 18, 22, and 23*

Appellants assert that “[c]laim[] 17 stands rejected as being obvious over Hafer in view of Moore. Appellant respectfully traverses this rejection at least because Hafer and Moore do not teach or suggest all of the recitations of claim 17” (Appeal Br. 8).

However, Appellants' assertion does not rise to the level of a substantive argument for patentability. *Cf. In re Lovin*, 652 F.3d 1349, 1357 (Fed. Cir. 2011) (holding that the Board reasonably interpreted 37 C.F.R. § 41.37(c)(1)(vii) as requiring “more substantive arguments in an appeal brief than a mere recitation of the claim elements and a naked assertion that the corresponding elements were not found in the prior art”). Here, Appellants refer to “the same or similar reasons stated above with regard to Hafer and Moore” (Appeal Br. 8), however, none of independent claims 1, 7, and 14 are rejected under this rejection. We also note that Appellants' briefs provide no arguments with respect to Moore.

In view of the foregoing, we sustain the Examiner's rejection of independent claim 17 under 35 U.S.C. § 103(a) as unpatentable over Hafer and Moore. For the same reasons, we also sustain the rejections of dependent claims 18, 22, and 23, which are not separately argued.

DECISION

The Examiner's rejection of claims 1–15, 17, 18, and 21–25 under 35 U.S.C. § 101 is sustained.

The Examiner's rejections of claims 1–15, 21, 21, 24, and 25 under 35 U.S.C. § 103(a) are sustained.

The Examiner's rejections of claims 17, 18, 22, and 23 under 35 U.S.C. § 103(a) are not sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED